



Paper No. 5

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OFFICE OF PETITIONS

In re Application of :
Greggory Riggins :
Application No. 09/853,880 : DECISION GRANTING PETITION
Filed: 14 May, 2001 :
Attorney's Docket No. 00250.00003 :

This is a decision on the petition filed on 19 December, 2001, to withdraw the "Notice of Incomplete Nonprovisional Application" mailed on 30 October, 2001, and to accord the above-identified application a filing date of 14 May, 2001.

On 14 May, 2001, the application was filed. On 30 October, 2001, however, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that, *inter alia*, the application had not been accorded a filing date because the application had been deposited without drawings. A two (2)-month period for reply was set.

In response, on 19 December, 2001, the present petition was filed, accompanied by four (4) sheets of drawings. Petitioners argue that the application should be accorded a filing date of 14 May, 2001, because (a) the application was deposited with drawings which were subsequently lost in the USPTO and (b) drawings are not necessary under 35 U.S.C. § 113 (first sentence). In support of petitioner's contention that four (4) sheets of drawings were filed with the other application papers deposited on 14 May, 2001, petitioner has provided, *inter alia*, a copy of a mail log purporting to show that four (4) sheets of

drawings were filed with the other application papers deposited on 14 May, 2001.

A review of the record reveals that no drawings are located among the application papers deposited on 14 May, 2001. Furthermore, petitioner has not provided sufficient proof that the drawings were deposited in the USPTO with the other application papers on 14 May, 2001.

It is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of MPEP 503.¹ This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.²

¹ The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (O.G.) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the O.G. that contains important O.G. notices of continuing relevance.

² MPEP 503.

The return postcard procedure described at MPEP 503 provides a basis by which petitioner may show that an application or parts thereof were received in the USPTO on a given date, and that the application is therefore entitled to a filing date of the date that the application, or parts thereof, were deposited in the USPTO. Petitioner, however, has not provided an itemized postcard showing that the drawings in question were deposited in the USPTO on 14 May, 2001. Although petitioner's mail log is shows that petitioner intended to file four (4) sheets of drawings with the other application papers deposited on 14 May, 2001, it is not persuasive evidence that the four (4) sheets of drawings petitioner intended to file were actually received in the USPTO on that date. In summary, petitioner simply has no proof that the drawings were among the papers deposited in the USPTO on the requested filing date.

Petitioner alternatively contends that drawings are not necessary for the understanding of the subject matter sought to be patented. It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).³ A review of the record reveals that Claims 1-47 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. The petition fee of \$130.00 is unnecessary and will be refunded to counsel's deposit account, No. 19-0733.

The "Notice of Incomplete Nonprovisional Application" mailed on 30 October, 2001, was sent in error and is hereby vacated.

The four (4) sheets of drawings filed with the present petition will not be entered and will not be used during examination.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 14 May, 2001, and for an indication on the bib-data sheet that no sheets of drawings were present on filing.

³MPEP 601.01(f).

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Telephone inquiries specific to this matter should be directed to
Petitions Attorney Douglas I. Wood at 703 308-6918.

A handwritten signature in cursive script, appearing to read "Beverly M. Flanagan".

Beverly M. Flanagan
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